

**TOWN OF DAVIE  
TOWN COUNCIL AGENDA REPORT**

**TO:** Mayor and Councilmembers

**FROM/PHONE:** Susan Dean/797-1042 by Herb Hyman/797-1016

**SUBJECT:** Resolution

**AFFECTED DISTRICT:** All

**TITLE OF AGENDA ITEM:** A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH BROWN AND CALDWELL TO PROVIDE A WASTE WEIGHT GENERATION STUDY.

**REPORT IN BRIEF:** The Town Council approved the selection of Brown and Caldwell as the highest ranked firm to provide a waste weight generation study by Resolution R-2005-139 and authorized staff to negotiate a contract for these services. The attached contract is a result of negotiations authorized by R-2005-139. This study is required by the contract between the Town and Waste Management. The Town will pay Brown and Caldwell for this study and then the Town will be reimbursed by Waste Management.

**PREVIOUS ACTIONS:** Resolution R-2005-139.

**CONCURRENCES:** This contract was negotiated by the Programs Manager, the Procurement Manager, and representatives from Waste Management. The contract document was reviewed by the Town Attorney's Office.

**FISCAL IMPACT:**

Has request been budgeted? yes

If yes, expected cost: \$119,600.00

Account Name: Administration-Special Projects

Account Number 001-0102-512-0502

Additional Comments: Entire cost is reimbursed to the Town by Waste

**RECOMMENDATION(S):** Motion to approve the resolution.

**Attachment(s):**

Two (2) copies of contract

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, AUTHORIZING THE MAYOR TO EXECUTE A CONTRACT WITH BROWN AND CALDWELL TO PROVIDE A WASTE WEIGHT GENERATION STUDY.

WHEREAS, the Town Council approved Brown and Caldwell as the highest ranking firm to provide a waste weight generation study by Resolution R-2005-139; and

WHEREAS, staff negotiated a contract pursuant to Resolution R-2005-139; and

WHEREAS, after review, the Town Council authorizes the Mayor to execute a contract with Brown and Caldwell.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA:

SECTION 1. The Town Council authorizes the Mayor to execute a contract with Brown and Caldwell to provide a waste weight generation study which is attached hereto and identified as Attachment "A".

SECTION 2. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

\_\_\_\_\_  
MAYOR/COUNCILMEMBER

Attest:

\_\_\_\_\_  
TOWN CLERK

APPROVED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2005

**AGREEMENT  
FOR  
PROFESSIONAL CONSULTING SERVICES  
BY AND BETWEEN**

**BROWN AND CALDWELL (CORPORATION)**

**AND**

**THE TOWN OF DAVIE, FLORIDA and  
WASTE MANAGEMENT INC. OF FLORIDA**

**THIS MASTER AGREEMENT** is made this \_\_\_\_\_ day of \_\_\_\_\_, 2005 by and between **THE TOWN OF DAVIE, FLORIDA and WASTE MANAGEMENT INC. OF FLORIDA**, (referred to herein as "TOWN/WM") and **BROWN AND CALDWELL (CORPORATION)** with an office at 8200 NW 33<sup>rd</sup> Street, Suite 410, Miami, Florida 33122 (hereinafter referred to as "CONSULTANT"), wit for the performance of professional consulting services in connection with RFP No. 05--48 Request for Proposals for Residential Curbside Solid Waste Generation Study issued by the Town of Davie.

**WHEREAS**, the Town/WM desires to engage CONSULTANT to provide professional consulting services for a weight generation study of residential curbside solid waste; and

**WHEREAS**, CONSULTANT desires to render such services in accordance with this Agreement and schedules hereto; and

**WHEREAS**, the particular professional consulting services to be performed by CONSULTANT, the charges associated therewith, and the location(s) (hereinafter referred to as the "Site") where or for which such services shall be performed shall be set forth in detail herein.

**NOW, THEREFORE**, along with the foregoing premises, the mutual covenants and promises contained herein, the execution of any Addenda hereto and the mutual intention to be legally bound hereby, all as consideration therefore, both CONSULTANT and Town/WM hereby agree as follows:

**1.0. ENGAGEMENT OF CONSULTANT.**

**1.1. Services and Compensation.** CONSULTANT is hereby engaged by Town/WM to perform all necessary and required professional consulting services as set forth herein and on **Schedule A** hereto, in accordance with the terms and conditions of this Agreement and such Schedule. Town/WM shall compensate CONSULTANT, as set forth herein and on such Schedule A, for the proper performance of such services.

**1.2. Preparatory Services and/or Work.** CONSULTANT shall undertake all preparatory services and/or work to enable it to execute, in good faith, this Agreement and Schedules hereto. CONSULTANT shall be solely responsible and liable for and shall pay for all such services and/or work at its sole cost, expense and risk (at no cost or risk to Town/WM). No compensation shall be earned by CONSULTANT nor paid by Town/WM for any services, costs, damages, expenses (including but not limited to the cost of obtaining or upgrading insurance, attorneys' fees, accounting fees or other experts' or consultants' fees) or any other work of any kind which CONSULTANT has contracted for or otherwise undertaken or incurred pursuant to preparation of proposals or estimates in order to execute this Agreement or any Schedule hereto.

**2.0. THE WORK.**

**2.1. Scope of Work.** CONSULTANT shall perform professional consulting services as set forth herein and in Schedule A (hereinafter referred to as "the Work"). This Scope of Work shall include a written schedule of professional consulting services that shall comprise the Work and corresponding prices for such Work based upon negotiated rates and prices (as described herein).

**2.2. Final Invoice and Completion of the Work.** The Work shall not be considered to be complete and Final Payment shall not be made to CONSULTANT until all tasks that should have been completed are properly completed and Town/WM has received a final invoice from CONSULTANT. Such Final Payment given by Town/WM does not relieve CONSULTANT of any responsibility or liability for properly performing all activities in accordance with this Agreement, Schedules hereto and the degree of professional care,

prudence and skill indicated herein. In addition, such Final Payment does not relieve CONSULTANT from being subject to all indemnification and/or other terms or conditions of this Agreement and Schedules.

2.3. Changed Work. Town/WM may at any time change the Work by making additions to, or directing the omission of, parts or all of the Work by sending a written change directive to CONSULTANT and CONSULTANT shall promptly perform or omit such changed Work as directed, provided however, that if any change should, in the opinion of CONSULTANT, necessitate an increase in the Agreement Price and/or extension of the time constraints reflected on Schedules hereto for completion of the Work, CONSULTANT shall promptly notify Town/WM in writing [within five (5) business days after receipt of such change directive] of CONSULTANT'S reasons for such change. Changes to Agreement Price and extension of time require approval of Town/WM.

2.4. Management, Direction and Control of the Work. CONSULTANT shall be solely responsible for managing, directing, controlling and performing the Work in a professional manner.

### 3.0. PROFESSIONAL AND ETHICAL STANDARDS.

CONSULTANT shall perform the Work on behalf of itself and Town/WM in a professional and ethical manner, in accordance with industry standards and in full compliance with all applicable governmental, Site-related and professional laws, permits and regulations.

### 4.0. TERM AND PERIOD OF PERFORMANCE.

4.1. Term. The term of this Agreement shall be for a period of one (1) year from the date first above written otherwise terminated as provided herein.

#### 4.2. Period of Performance.

4.2.1. Time for Commencement and Completion of the Work. CONSULTANT shall commence the Work on the date(s) indicated in the Schedules. CONSULTANT shall complete the Work in accordance with the Period of Performance reflected in the Schedules. The time period between the date on which the Work is to commence and the date of completion shall hereinafter be referred to as the "Period of Performance". The Period of Performance may be extended or reduced by execution of another Schedule by Town/WM and CONSULTANT expressly specifying such extension or reduction.

4.2.2. Duty to Inform of Delay and Completion. CONSULTANT shall have an affirmative duty to keep Town/WM fully advised of any delays or difficulties that could adversely impact the Period of Performance and/or the Schedules.

### 5.0. COMPENSATION.

#### 5.1. The Agreement Price.

5.1.1. Definition. Town/WM shall pay compensation to CONSULTANT based upon proper performance of each task of the Work at fixed unit prices for time/and or material which shall be guaranteed not to exceed a stated ceiling price or on a firm lump sum price basis as indicated in Schedules hereto (hereinafter referred to as the "Agreement Price"). The term "Agreement Price," as it is used in this Agreement and Schedules hereto, shall refer to the total price to be charged to Town/WM as reflected on the Schedules. CONSULTANT agrees to accept Final Payment of the Agreement Price for each task as specified in this Agreement and Schedules hereto as full and complete compensation for performing the Work.

5.1.2. Taxes. The Agreement Price shall include all federal, state and local taxes of any type. CONSULTANT, its employees, agents and subcontractors, shall be solely responsible and liable for the payment of all such taxes.

#### 5.2. The Agreement Rates.

5.2.1. Definition of Agreement Rates. The rates and/or prices as negotiated between Town/WM and CONSULTANT which are reflected on the Schedules and which are used as a basis for calculation of the Agreement Price shall hereinafter be referred to as the "Agreement Rates". The Agreement Rates shall be firm for the duration of the Period of Performance. The rates and/or prices that comprise the Agreement Rates shall already include overhead (including but not limited to health and welfare benefit costs, taxes and insurance), profit and all other costs of any kind.

### 6.0. PAYMENT.

6.1. Invoice Procedure. CONSULTANT shall submit monthly invoices to the Town of Davie with a copy to Waste Management Inc. of Florida. The amount charged on each invoice shall be deemed to include charges for all Work performed during the invoice billing period. On each invoice, CONSULTANT shall briefly but thoroughly describe the Work performed and the charges incurred during the Invoice Billing Period, by task(s), as authorized in such Schedule on each invoice. If CONSULTANT cannot comply with such format, CONSULTANT shall arrange a meeting with Town/WM to present an invoice format which is acceptable to both Town/WM and CONSULTANT.

6.1.1. [Left blank intentionally]

6.1.2. Firm Lump Sum Services. For services provided pursuant to a Schedule requiring a firm lump sum price, CONSULTANT shall reflect on the invoice the percentage of the Work completed along with other documentation as Town/WM may request supporting the determination of such percentage of Work completed.

6.2. Time for Payment. Pursuant to the Florida Prompt Payment Act, within forty-five (45) days after receipt of an acceptable invoice, Town/WM shall pay all undisputed amounts plus or minus any adjustments that are mutually agreed upon.

6.3. Disputed Invoices. If any items in any invoices submitted by CONSULTANT are disputed by Town/WM, Town/WM shall promptly notify CONSULTANT of the dispute and request clarification or remedial action. If any dispute is settled in CONSULTANT'S favor, CONSULTANT shall include the settled amount on a subsequent regularly scheduled invoice or on a special invoice for the disputed item only.

6.4. Withheld Payments. Town/WM shall not be deemed to be in breach of this Agreement or any Schedule hereto by reason of withholding any payment pursuant to any provision of this Agreement or applicable law. In no event shall any interest be due and payable by Town/WM to CONSULTANT on any sums payable by Town/WM under this Agreement or Schedule hereto including without limitation sums which Town/WM is authorized to withhold or retain pursuant to this Agreement or otherwise.

6.5. Final Payment. "Final Payment" shall be the last payment of compensation and/or expenses to be made to CONSULTANT pursuant to the terms and conditions of this Agreement. Final Payment shall not be made to CONSULTANT until all disputed invoices have been satisfactorily resolved, all proprietary and project-related information has been submitted to Town/WM as provided herein.

#### 7.0. CONSULTANT'S PERFORMANCE OF THE WORK AND TOWN/WM RIGHT OF APPROVAL.

7.1. CONSULTANT'S Occupational Licensure. CONSULTANT and its employees, agents and subcontractors shall be registered, fully qualified and licensed to perform the Work pursuant to all applicable laws, regulations and orders. CONSULTANT shall only permit individuals with the requisite skill, knowledge and experience to perform the Work.

#### 7.2. Quality of the Work.

7.2.1. Conformance with the Agreement and Schedule. CONSULTANT'S services shall conform to all Schedules made a part of this Agreement and shall comply with the requirements, specifications, terms and conditions of this Agreement and Schedules hereto.

7.2.2. CONSULTANT'S Expertise and Performance. CONSULTANT represents that it possesses skills, qualifications, knowledge, and has adequate staff and supervision to provide within the Period of Performance, all engineering, technical and administrative services to perform the Work. Town/WM is relying on CONSULTANT'S skill, experience, expertise, qualifications and representations made by CONSULTANT herein for CONSULTANT'S proper performance of the Work. CONSULTANT shall be responsible for the professional quality, technical accuracy and coordination of the Work which shall include but not be limited to all designs, drawings, specifications and other services furnished under this Agreement and Schedules hereto and is responsible for completion of all tasks included in each Scope of Work in accordance with the provisions of this Agreement and such Schedules.

7.2.3. Standard Applicable to CONSULTANT. CONSULTANT has a duty to and shall perform the Work in accordance with the degree of professional care, prudence and skill of a competent consulting engineering firm in performing comparable services. Notwithstanding the foregoing, if such professional standard as applied to CONSULTANT'S performance of the Work, permits a lower or less stringent standard of care, prudence and skill than that applicable to the reasonably prudent person, such professional standard shall be raised to that required of the reasonably prudent person.

7.2.4. Remedies. CONSULTANT shall be responsible for all costs, damages and expenses (including but not limited to all reasonable attorneys', accounting, expert, professional engineering, technical, testing, sampling, investigatory and all other reasonable consultants' fees and/or charges) arising from the revision, correction, repair or replacement (at Town/WM's discretion) of any

work, improvements, property of Town/WM, or others suffers as a result of errors, defects, or negligent acts or omissions concerning CONSULTANT'S designs, workmanship, drawings, reports, specifications, opinions, permit drafting and/or other products or services provided by CONSULTANT, its employees, agents and/or subcontractors pursuant to this Agreement and Schedules hereto. Investigatory expenses as referenced in this Paragraph shall include but not be limited to the cost of uncovering, removal, reinstallation, covering, inspections, testing and sampling by Town/WM to determine the nature and extent of the error, defect, negligent act or omission.

7.2.5. Performance of Remedial Work. Town/WM shall decide, in its sole reasonable discretion, whether the revision, repair, correction, replacement, uncovering, removal, reinstallation, inspections, testing and sampling referred to in Section 7.2.4 of this Agreement (hereinafter referred to as "Remedial Work"), will be performed in part or entirely by CONSULTANT or by Town/WM. If Town/WM decides that CONSULTANT is to perform the Remedial Work, such Remedial Work shall be undertaken in an expeditious fashion in accordance with a schedule developed by Town/WM, in Town/WM's sole reasonable discretion, even if additional costs and expenses are incurred by CONSULTANT in completing such Remedial Work on an accelerated basis. If the Remedial Work is to be performed by Town/WM, CONSULTANT shall be responsible for all costs and expenses of such Remedial Work to include but not be limited to those costs and expenses referenced in Section 7.2.4 of this Agreement. CONSULTANT shall pay to Town/WM such costs and expenses of Remedial Work as referenced herein, within ten (10) calendar days after receipt of an invoice which shall be sent to CONSULTANT reflecting the costs and expenses of such Remedial Work. Town/WM may include charges on such invoice for the cost and expenses of performing the Remedial Work on an accelerated basis.

7.3. Compliance with Laws. CONSULTANT shall comply with all laws and regulations pertaining to its performance of the work under this Agreement and its Addenda, and shall provide Town/WM immediate oral notice of any alleged violations thereof, followed by written confirmation of such oral notice within twenty-four (24) hours.

#### 8.0. INSURANCE REQUIREMENTS AND INDEMNIFICATION.

8.1. Insurance Requirements. Consultant represents that Consultant now carries, and will continue during the term of this Agreement to carry, Worker's Compensation/Employers' Liability, Comprehensive General and Contractual Liability, Comprehensive Automobile Liability, and Professional Liability insurance in the following amounts:

A.	Worker's Compensation-Coverage A Employers' Liability-Coverage B	Statutory
		\$1,000,000 each accident \$1,000,000 disease- each employee \$1,000,000 disease- policy limit
B.	Commercial General Liability (including Contractual Liability):	\$1,000,000 each occurrence
		\$1,000,000 fire damage (any one fire)
		\$10,000 medical expense (any one person)
		\$1,000,000 personal and adv. Injury
		\$2,000,000 general aggregate
		\$2,000,000 products – completed operations aggregate
C.	Comprehensive Automobile Liability (Any Auto, Hired, and Non-owned Vehicles):	\$1,000,000 combines single limit (each accident)
D.	Professional Liability	\$1,000,000 per claim
		\$1,000,000 aggregate

To the extent of Consultant's indemnity obligation as set forth herein, liability coverage shall be primary to any insurance maintained by Town/WM. Said insurance policies shall be written by insurance companies satisfactory to Town/WM. Certificates of Insurance shall be filed with Town/WM upon Town/WM's request. Such Certificates shall afford Town/WM thirty (30) days written notice of cancellation or material change in coverage and endorsements shall specifically confirm Contractual Liability Coverage on the Commercial General Liability coverage for the indemnification clause in this Agreement.

#### 8.2. Indemnification.

8.2.1. **Indemnification by CONSULTANT.** To the fullest extent permitted by law, CONSULTANT, for itself, its employees, agents and subcontractors shall indemnify, defend and hold Town/WM, their subsidiary and/or affiliated companies and their respective officials, officers, directors, employees, and agents harmless from and against any and all: claims; lawsuits; damages; losses (specifically including loss of use of property); and all costs, expenses and other liabilities whatsoever relating thereto (including, but not limited to: reasonable attorneys' fees; professional fees and charges; sampling and testing charges; accounting fees; and other experts' and consultants' fees and charges); incurred as a result of the breach of any of the terms and/or conditions of this Agreement or Schedules hereto by CONSULTANT, its employees, agents and/or subcontractors, and/or for or on account of any injuries to or death of any person (including, but not limited to, injury or death to employees, agents and/or subcontractors of CONSULTANT); loss of or damage to any property (including, but not limited to, property damage to employees, agents and/or subcontractors of CONSULTANT); and/or contamination of or adverse effects on the environment to the extent arising from negligence, willful misconduct and/or strict liability of CONSULTANT, its employees, agents and/or subcontractors in performance of the Work. The obligations contained in this section shall survive termination of this Agreement.

## **9.0 CONSULTANT'S EMPLOYEES**

In the event CONSULTANT must hire employees and/or interns in connection with the Work to be performed under this Agreement and Schedules hereto to work at the Site, the following provisions shall apply:

9.1 CONSULTANT shall be solely responsible for recruiting, interviewing, selecting, assigning, removing, scheduling and supervising all persons who shall perform Work.

9.2 As the employer, CONSULTANT shall (i) maintain all necessary personnel and payroll records for its Employees, (ii) calculate their wages and withhold taxes and other government mandated charges, if any, (iii) remit such taxes and charges to the appropriate government entity, (iv) pay all net wages and fringe benefits, if any, directly to its Employees, and (v) provide workers' compensation and unemployment insurance coverage in amounts as required by law. CONSULTANT's obligation under clause (iv) of this Section 1.2(B) shall be absolute and shall not be affected by any failure of Town/WM to pay fees or other amounts owing to CONSULTANT hereunder.

9.3 At Town/WM's request, CONSULTANT shall remove from an assignment any employee if, in the discretion of Town/WM, the Employee does, or poses a threat to, (i) disrupt Town/WM or its relationships with its employees or third parties performing services for, or doing business with, Town/WM (ii) expose Town/WM to civil or criminal liability, costs, expenses or damages of any kind, (iii) violate any Town/WM policy applicable to third parties entering upon Town/WM premises, or (iv) create confusion or disputes with regard to intellectual property or confidentiality rights or obligations.

9.4 In connection with the performance of the Work done pursuant to this Agreement and its Schedules, CONSULTANT shall comply, and shall cause each of its Employees to comply, with all statutes, laws, regulations, ordinances, judgments, permits and other governmental rules or restrictions applicable to CONSULTANT'S, Town/WM's business, to the performance of the Work by employees and the employment of the employees.

## **10.0 CONFIDENTIALITY.**

10.1. **Restrictions on the Use of Confidential Information.** In connection with the Work to be performed under this Agreement and Schedules hereto, Town/WM may disclose to CONSULTANT, or CONSULTANT may have access to, through its representatives, confidential commercial information and technical data (including trade secrets in which Town/WM has proprietary rights) patentable as well as unpatentable (hereinafter "Information"). All such Information, howsoever disclosed, developed, or obtained by CONSULTANT shall not be used or disclosed to others without Town/WM's prior written consent unless such Information is: (A) In the public sector (through no fault or breach of this Agreement by CONSULTANT); or (B) Independently developed by CONSULTANT; or (C) Received by CONSULTANT lawfully and in good faith from a third party entitled to disclose such Information; or (D) Legally required to be disclosed. CONSULTANT shall provide Town/WM with written notice immediately for requests made upon CONSULTANT to divulge such Information so that Town/WM may enforce the provisions of this Agreement, seek an appropriate protective order and/or in Town/WM sole discretion, waive CONSULTANT'S compliance with selected provisions of this Agreement concerning all or a portion of the Information. CONSULTANT shall hold such Information confidential during the course of this Master Agreement and for a period of not less than five (5) years from the date of termination of this Agreement or any Schedule hereto. CONSULTANT agrees that neither CONSULTANT nor its employees will disclose to Town/WM technical data and information which CONSULTANT has received in confidence from third parties without previously obtaining the right to disclose the technical data or information. Upon completion of the Work, or upon earlier termination of this Agreement, CONSULTANT shall return to Town/WM all such drawings, plans, prints, reports, studies and all other information supplied by Town/WM or provided by CONSULTANT hereunder, together with all copies thereof made by or for CONSULTANT provided, however that CONSULTANT may retain one (1) copy of such

information for archive purposes and all terms and conditions of this Paragraph shall survive, remain in full force and effect regarding such copies and shall not terminate regardless of any terms or conditions herein to the contrary or the termination of this Agreement and/or any Schedules hereto. CONSULTANT shall inform its employees, agents and subcontractors assigned to the Work of CONSULTANT'S obligations contained herein and shall, upon the request of Town/WM, require such employees, agents and subcontractors to sign agreements of confidentiality representing that they will comply with such obligations.

10.2. Advertisement. CONSULTANT shall not disclose or advertise in any manner the nature of the services to be performed hereunder, the terms or conditions of this Agreement and Schedules hereto, or the fact that it has entered into a consulting agreement with Town/WM, except to the extent necessary to perform the Work or as required by law. Notwithstanding the foregoing, CONSULTANT may list Town/WM's name as a customer on customer lists used to obtain future business or for conflict of interest considerations provided, however, that any descriptions of projects or other information regarding Work performed by CONSULTANT pursuant to this Agreement and schedules hereto is confidential information and subject to the terms and conditions of Section 10.1 of this Agreement.

#### 11.0. **PATENTS AND COPYRIGHTS.**

If, during the course of performance of the Work by CONSULTANT under this Agreement and Addenda hereto, or within a period of one (1) year thereafter, CONSULTANT and/or any of CONSULTANT'S employees, agents and/or subcontractors shall make any invention, discovery or computer software program arising out of or resulting from the Work performed by CONSULTANT pursuant to this Agreement and Schedules hereto, CONSULTANT shall furnish Town/WM with full and complete information on such invention, discovery or computer software program and shall, upon the request of Town/WM and without further compensation: (A) Assign the entire right, title and interest thereto, together with all rights to patents thereon, to Town/WM; and (B) Authorize Town/WM to apply for Letters Patent for said inventions in any and all countries in its own name or in any name at Town/WM's election. CONSULTANT shall further, upon the request of Town/WM and at Town/WM expense, execute and deliver, or procure the execution and delivery of, any and all rightful oaths, applications for patents, and other papers and generally do all lawful acts to aid Town/WM, its successors, assigns or legal representatives to obtain and enforce patent protection on said invention in all countries. In addition, CONSULTANT shall indemnify, defend, and hold harmless Town/WM, its affiliated and/or subsidiary companies, and their respective officials, officers, directors, employees, agents and subcontractors from all losses, costs, claims, lawsuits, damages or expenses (including but not limited to reasonable attorneys' fees, professional fees and charges, tests, sampling and testing charges, accounting fees, and other experts' and consultants' reasonable fees and charges) arising from or relating to any infringement or claim of infringement of any rights of others, including without limitation patent rights, arising out of or resulting from CONSULTANT'S performance of the Work pursuant to this Agreement and Schedules hereto.

#### 12.0. **PROPRIETARY INFORMATION.**

All reports as well as drawings, plans, sketches, renderings, calculations, analyses, logs, documents, data, estimates, summaries, opinions, permit applications, evaluations, assessments, submissions, specifications, studies, magnetic media, tapes, models, notes, memoranda, computer software programs and/or other information assembled or prepared by CONSULTANT for the Work, or furnished to CONSULTANT in connection with this Agreement or any Schedules hereto, shall be the property of Town/WM. All final, reproducible drawings to be prepared by CONSULTANT shall be of Mylar or equivalent quality. CONSULTANT agrees not to assert any rights to such material and not to establish any claim under design, patent or copyright laws. It is agreed that all copyrightable or patentable material produced by CONSULTANT has been specifically commissioned by Town/WM and shall be considered a "work for hire" and that all copyright and other proprietary rights therein shall vest in Town/WM. Town/WM shall be furnished one final copy of drawings (a hard copy as well as an electronic format copy), computer software program and reports (a hard copy as well as an electronic format copy) at no additional cost to Town/WM which must be delivered to Town/WM before Final Payment may be made hereunder. However, additional copies of drawings and reports shall be provided to Town/WM at the cost of reproduction at a fee that has been negotiated and reflected on Schedules hereto.

#### 13.0. **TERMINATION.**

13.1. Termination of CONSULTANT for Default. CONSULTANT shall be deemed to be in default of this Master Agreement if CONSULTANT shall: (A) Be adjudged a bankrupt; or (B) Make a general assignment for the benefit of its creditors; or (C) Have a receiver appointed on account of CONSULTANT'S insolvency; or (D) Default in the performance of any undertaking to be performed by CONSULTANT or breach of any term or condition under this Agreement or any Schedules hereto, including but not limited to the payment of any sum due hereunder. If CONSULTANT fails to correct any such default within five (5) working days following notice thereof from Town/WM, Town/WM may, without prejudice to any other right or remedy, terminate this Agreement and/or any Schedules hereto for default. CONSULTANT shall be liable for all costs and expenses incurred by Town/WM as a result of CONSULTANT being terminated herein.



13.2. Other Termination of CONSULTANT. Town/WM may, at any time, unilaterally terminate the Work for any reason or no reason, in Town/WM's sole discretion, by giving five (5) calendar days advance written notice of termination to CONSULTANT. If the Work is so terminated, Town/WM shall pay to CONSULTANT a sum equal to CONSULTANT'S professional consulting services actually and properly performed by CONSULTANT in accordance with the terms and conditions of this Agreement and Schedules hereto, prior to receipt of such notice of termination by CONSULTANT, but not previously paid for by Town/WM. Any payment received by CONSULTANT under the terms and conditions of this Section 13.2 shall be full and complete compensation to CONSULTANT for all Work performed by CONSULTANT hereunder and shall be deemed to be full and complete satisfaction of any and all damages, costs and/or expenses incurred by CONSULTANT regarding such termination. Such payment indicated herein shall be liquidated damages for any and all of CONSULTANT'S damages hereunder due to termination and is not a penalty.

14.0. **FORCE MAJEURE.**

A failure or delay by CONSULTANT to perform any act or obligation to be performed by CONSULTANT under this Agreement and/or Schedules hereto within the Period of Performance and/or the Schedule (as defined herein), if such failure or delay is caused by an Act of God or public enemy, explosion, fire, storm, earthquake, flood, drought, riots, vandalism, sabotage, acts of governmental authorities, embargo or war, or unusually severe weather shall not constitute a breach of this Agreement. Notwithstanding the foregoing, delays caused by CONSULTANT, its employees, agents or subcontractors shall not be considered causes for an extension of the Period of Performance.

15.0. **COMPLIANCE WITH LAW, PERMITS AND SITE REQUIREMENTS.**

15.1. Applicable Law and Permit Conditions. CONSULTANT for itself, its employees, agents and subcontractors, represents that it will comply with all applicable federal, state and local statutes, laws, ordinances, codes, rules, regulations, orders or other governmental requirements of any kind (including but not limited to waste disposal and other permits and rules affecting the Site) and agreements affecting or rules concerning the Site, in existence at the time of execution of this Agreement, or thereafter enacted which are applicable to performance of the Work.

15.2. Fines, Penalties and Assessments. CONSULTANT shall be responsible for and shall indemnify, defend and hold harmless Town/WM, their subsidiary and/or affiliated companies and their respective officials, officers, employees, agents and subcontractors and Customers from and against any fines, penalties, or assessments levied against or imposed upon itself or Town/WM, its subsidiary and/or affiliated companies and their respective officials, officers, directors, employees, agents and subcontractors arising from or related to any failure or alleged failure by CONSULTANT, its employees, agents and/or subcontractors (or the Work) to comply with or causing Town/WM not to comply with applicable federal, state or local laws, rules, or regulations (including but not limited to those relating to health, safety and the environment).

16.0. **COMPONENTS OF CONSULTANT'S WORK.**

16.1. Obtaining Permits, Approvals, Certificates and Licenses. CONSULTANT shall determine, procure and pay for all federal, state, county, local and all other applicable permits, approvals, certificates and licenses as required for performance of the Work except for those already obtained or applied for by Town/WM. CONSULTANT shall not initiate or perform any Work until the appropriate permits, approvals, certificates and/or licenses are obtained and copies are submitted to Town/WM.

16.2. Responsibility for Knowledge of Site Conditions. CONSULTANT represents by its execution of this Master Agreement, that CONSULTANT has had, or will have, the opportunity to inspect, carefully study, examine and has thoroughly inspected, studied and examined the Site, all applicable laws and regulations, the terms and conditions of this Agreement, and the terms and conditions of the applicable Schedules.

16.3. [Left blank intentionally].

17.0 [Left blank intentionally].

18.0. **MISCELLANEOUS.**

18.1. Coordination of Performance of the Work. CONSULTANT shall be required to coordinate its Work with other consultants and/or contractors so as to afford others and be afforded a reasonable opportunity for timely execution of performance of

work. Any loss, cost, damage or expense caused by defective or improperly timed or coordinated Work, if applicable, shall be borne by the consultant or contractor responsible therefore.

18.2. Access to Town/WM Sites. Town/WM shall permit CONSULTANT, its agents, employees and subcontractors to have access to the Site during normal business hours and at other times as designated by Town/WM, in Town/WM's sole discretion, for performance of the Work pursuant to executed Addenda hereto.

18.3. Right to Audit. Town/WM shall have the right to audit and inspect all books, records and accounts of CONSULTANT insofar as they are pertinent to this Agreement and any Schedules executed hereto, at all times during the course of the Work and for a period of two (2) years after receipt of Final Payment by CONSULTANT hereunder. Town/WM shall give CONSULTANT a minimum of one (1) week notice prior to conducting the audit.

18.4. Assignment, Subcontracting and Third Party Beneficiaries. CONSULTANT may not assign or subcontract any portion of the Work, this Agreement, or Schedules hereto, without the prior written approval of Town/WM. Nothing contained in this Agreement or Schedules hereto, shall create any contractual relationship between Town/WM and any subcontractor of CONSULTANT, but CONSULTANT shall be fully responsible to Town/WM for all acts and omissions of its subcontractors, their agents and employees, as CONSULTANT is for the acts and omissions of all persons directly employed by CONSULTANT.

18.5. Independent Contractor. CONSULTANT shall be an independent contractor in performing the Work and shall not be an agent, employee or representative of Town/WM for any purpose.

18.6. Use of the Site and Other Premises. If CONSULTANT removes, alters, destroys, or defaces the property of Town/WM or the work of another consultant or contractor in the performance of the Work and such property is not required to be altered, destroyed or defaced as part of such Work pursuant to this Agreement or any Schedules hereto, CONSULTANT shall promptly repair or replace the affected property or work to the satisfaction of Town/WM.

18.7. Notice. Any notice provided pursuant to this Agreement shall be deemed given and received: (A) by telecopy (facsimile), received during normal business hours; or (B) by hand delivery during normal business hours; or (C) received by a reputable overnight delivery service, the day after being sent prepaid by such overnight delivery service;

TO: WASTE MANAGEMENT  
2700 NW 48<sup>th</sup> St,  
Pompano Beach, FL 33073  
Attention: Tony Spadaccia  
Telephone: 954-984-  
Fax: 954-984-2057  
e-mail address: tspadacc@wm.com

TOWN OF DAVIE  
Herb Hyman  
Procurement Manager  
Town of Davie  
6591 SW 45<sup>th</sup> St.  
Davie, FL 33314-3399  
Telephone: 954-797-1016  
Fax: 954-797-1049  
[Herb\\_hyman@davie-fl.gov](mailto:Herb_hyman@davie-fl.gov)

TO CONSULTANT: Leonard Enriquez  
Brown and Caldwell  
8200 NW 33<sup>rd</sup> St.  
Miami, FL 33122  
Telephone: 305-418-4090  
Fax: 305-418-4924  
e-mail address: lenriquez@brwncald.com

Either party may change the individual or location for receipt of notice hereunder by providing written notice to the other party in the manner described in this Section.

18.8. Integration and Interpretation. This Agreement, the Schedules attached hereto, made a part hereof and/or incorporated by reference herein and all subsequently executed addenda hereto, shall, insofar as is possible, be so interpreted as to be consistent with one another. In the event of any conflict among the terms and/or conditions of this Agreement, the Schedules and/or addenda referenced above, the terms and conditions of this Agreement shall take precedence over all such Schedules and/or addenda. All such terms and/or conditions in such Schedules and/or addenda that are contrary or in addition to any terms and/or conditions in this Master Agreement shall be null and void and have no force or effect.

18.9. Governing Law and Severability. This Agreement and Schedules hereto, are to be governed by the laws of the location of the State of Florida. In the event that any provision or provisions of this Agreement shall be void, unlawful or unenforceable, such provision or provisions, or part(s) thereof, shall be deemed stricken from this Agreement, but this Agreement shall not otherwise be affected and the remaining provisions, or part(s) thereof, shall continue in full force and effect.

18.10. Modification of this Master Agreement. Town/WM and CONSULTANT agree that no change or modification to this Agreement, or any Schedules hereto, shall have any force or effect unless the change is in writing, dated and made a part of this Agreement.

18.11. Remedies and Rights Not Exclusive. No remedies or rights conferred upon Town/WM by this Agreement are intended to be exclusive of any remedy or right provided by law, but each shall be cumulative and shall be in addition to every other remedy or right given hereunder or now or hereafter existing at law or in equity (including but not limited to the remedy of specific performance). Nothing in this Agreement shall be interpreted or construed to mean that the Town waives its common law sovereign immunity or the limits on liability set forth in 768.28, Florida Statutes.

18.12. Entire Agreement. This Agreement, including the Schedules attached herein and/or made a part hereof and addenda subsequently executed hereto, constitute the negotiated and entire agreement between Town/WM and CONSULTANT and supersedes all prior written or oral negotiations, representations, agreements or understandings. In addition, this Agreement and Schedules hereto shall be binding upon all parties hereto, their successors, heirs, representatives and assigns.

18.13. Affiliates. CONSULTANT acknowledges that Waste Management may operate through some of its subsidiaries and/or affiliated companies. In the event the work to be performed is on account of or on behalf of such Waste Management subsidiary or affiliate, all references to Waste Management in this Master Agreement shall be deemed to also include such subsidiary or affiliate.

18.14. Mediation. In the event of a dispute concerning or arising out of this Agreement, the parties shall endeavor in good faith to resolve their differences through non-binding mediation in accordance with the Construction Mediation Rules of the American Arbitration Association currently in effect. A written demand for mediation shall be filed in writing with the other party to this Agreement within a reasonable time after the claim, dispute or other matter in question has arisen. Participation in good faith in such a mediation proceeding shall be a condition precedent to the initiation of legal proceedings by either party. The administrative costs of the mediation proceeding between the parties shall be shared equally.

IN WITNESS WHEREOF, the parties hereto have executed this Master Agreement as of the day and year first written above.

WASTE MANAGEMENT INC. OF FLORIDA

CONSULTANT: Brown and Caldwell

By: \_\_\_\_\_

By: Stuart Ogden

Its: \_\_\_\_\_

Its: Vice President

TOWN OF DAVIE, FLORIDA

By: \_\_\_\_\_

Its: \_\_\_\_\_

18.8. Integration and Interpretation. This Agreement, the Schedules attached hereto, made a part hereof and/or incorporated by reference herein and all subsequently executed addenda hereto, shall, insofar as is possible, be so interpreted as to be consistent with one another. In the event of any conflict among the terms and/or conditions of this Agreement, the Schedules and/or addenda referenced above, the terms and conditions of this Agreement shall take precedence over all such Schedules and/or addenda. All such terms and/or conditions in such Schedules and/or addenda that are contrary or in addition to any terms and/or conditions in this Master Agreement shall be null and void and have no force or effect.

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18.12. Entire Agreement. This Agreement, including the Schedules attached herein and/or made a part hereof and addenda subsequently executed hereto, constitute the negotiated and entire agreement between Town/WM and CONSULTANT and supersedes all prior written or oral negotiations, representations, agreements or understandings. In addition, this Agreement and Schedules hereto shall be binding upon all parties hereto, their successors, heirs, representatives and assigns.

18.13. Affiliates. CONSULTANT acknowledges that Waste Management may operate through some of its subsidiaries and/or affiliated companies. In the event the work to be performed is on account of or on behalf of such Waste Management subsidiary or affiliate, all references to Waste Management in this Master Agreement shall be deemed to also include such subsidiary or affiliate.

18.14. Mediation. In the event of a dispute concerning or arising out of this Agreement, the parties shall endeavor in good faith to resolve their differences through non-binding mediation in accordance with the Construction Mediation Rules of the American Arbitration Association currently in effect. A written demand for mediation shall be filed in writing with the other party to this Agreement within a reasonable time after the claim, dispute or other matter in question has arisen. Participation in good faith in such a mediation proceeding shall be a condition precedent to the initiation of legal proceedings by either party. The administrative costs of the mediation proceeding between the parties shall be shared equally.

IN WITNESS WHEREOF, the parties hereto have executed this Master Agreement as of the day and year first written above.

WASTE MANAGEMENT INC. OF FLORIDA

CONSULTANT: \_\_\_\_\_

By: John Casagrande

By: \_\_\_\_\_

Its: Mark D. Casagrande V.P.

Its: \_\_\_\_\_

TOWN OF DAVIE, FLORIDA

By: \_\_\_\_\_

Its: \_\_\_\_\_

“ The Work” : Schedule A to  
Agreement for Professional Service

**Town of Davie**

**Residential Waste Generation Study**

General- For Both Residential Cart Service and Bulk Waste Service

The basic sampling unit for the Study is designated a "truck day", which means the operation of a single truck during a single day.

The sample size is 100%. This means that 100% of the number of truck days that operate per week will be the size of the sample.

Therefore, statistical variability between each geographic Section (an elongated area) is eliminated as a variable in the study because all Sections will be sampled.

The only source of statistical variability is between weeks. This is being addressed satisfactorily by sampling one week during 2 Seasons, Wet and Dry. The samples will be taken during one week in July 2005 (Wet Season) and one week in January 2006 (Dry Season.)

Residential Cart Service

Residential Cart Service is provided to 24 (twenty-four) distinct geographic Sections as shown in Table A1 on the next page.

The A through X designations used here for each of the 24 Sections are designations developed for purposes of the Waste Generation Study.

As mentioned above, each of the 24 Sections means an elongated geographic area served by one truck two days per week.

For example, a household in Section A will receive a pickup on Monday and Thursday each week; a household on Section H will receive a pickup on Tuesday and Friday each week. The Residential Cart Service collection schedule is shown on the next page in Table A1.

On any single day of the week from Monday through Saturday, there are 8 Residential Cart trucks operating. For example, on Monday, the 8 Sections A, D, G, J, M, P, S, and V are served. On Tuesday, the 8 Sections B, E, H, K, N, Q, T, and W are served.

Table A1

Geographic Sections A through X	Collection Vehicle	Truck Days Sampled					
		MON	TUE	WED	THU	FRI	SAT
A B C	Truck 1	1	1	1	1	1	1
D E F	Truck 2	1	1	1	1	1	1
G H I	Truck 3	1	1	1	1	1	1
J K L	Truck 4	1	1	1	1	1	1
M N O	Truck 5	1	1	1	1	1	1
P Q R	Truck 6	1	1	1	1	1	1
S T U	Truck 7	1	1	1	1	1	1
V W X	Truck 8	1	1	1	1	1	1
Total Truck Days Sampled		8	8	8	8	8	8
Total Truck Days Sampled Each Season							48

With approximately 20,200 households in the Town (as currently estimated by Waste Management), served 2 times each week, the number of households served with Residential Cart Service each truck day is approximately:

40,400 pickups/week divided by 48 truck days = 842 households per truck day

Please note that the actual number of households served will be counted as part of the field data collection effort.

For each truck day, the field data collected by Brown and Caldwell personnel will be of two types:

- A) A copy of the tonnage ticket obtained at the disposal site each time the truck delivers to the disposal site (the South Broward Waste to Energy Facility); the copy should be made and retained by the Brown and Caldwell employee before leaving the disposal site to return to the field or before returning to base after the last load of the day; and
- B) A count of the households served each truck day; all households in the Section will be counted, without consideration whether a household has set out waste or not.

Brown and Caldwell will staff each truck day with a single vehicle following its assigned truck. Each vehicle will be staffed with a driver and a professional, degreed individual in charge of enumerating the households each truck day (" the Counter" ). This 2-person arrangement will allow accurate counting of households by the Counter without distractions from driving. The Counter will also verify that all waste collected is only residential waste from within the Town of Davie boundaries.

#### Bulk Waste Service

Bulk Waste Service is provided to 12 (twelve) distinct geographic Sections as shown in Table A2 on the following page. Each of the 12 "Sections" essentially means an elongated geographic area served by one truck one day per week.

For example, a household in Section S will receive a pickup on Monday each week. A household in Section Z will receive a pickup on Friday each week. On any single day of the week from Monday through Saturday, there are 2 Bulk Waste trucks operating. For example, on Monday, the 2 Sections Y and AB are served. On Tuesday, the 2 Sections Z and AC are served.

With approximately 20,200 households in the Town, as currently estimated by Waste Management, served 1 time per week, the number of households served each truck day is approximately:

$$20,200 \text{ households divided by } 12 \text{ truck days} = 1,683 \text{ households per truck day}$$

For each truck day, the field data collected by Brown and Caldwell personnel will be of two types:

- A) The tonnage ticket obtained at the disposal site each time the truck delivers to the disposal site (the South Broward Waste to Energy Facility) and  
B) A count of the households served each truck day will not be performed for the Bulk Waste Service, since the total number of households will be obtained during the Residential Cart Service field data collection.

Table A2

Geographic Sections X through AJ	Collection Vehicle	Truck Days Sampled					
		MON	TUE	WED	THU	FRI	SAT
Y Z AA	Truck 8	1	1	1			
AB AC AD	Truck 9	1	1	1			
AE AF AG	Truck 8				1	1	1
AH AI AJ	Truck 9				1	1	1
Total Truck Days Sampled =		2	2	2	2	2	2
		Total Truck Days Sampled Each Season =					
		12					

Brown and Caldwell will staff each truck day with a single vehicle following its assigned truck. Each vehicle will be staffed with a professional, degreed individual (" the Monitor" .) Since the number of households will be counted during the Residential Cart Service field data collection, there is no need for a second staff individual in each following vehicle. Rather, the Monitor will only verify that no waste is collected that is not residential waste from within the Town of Davie boundaries.

#### Data Analysis and Computations

Brown and Caldwell will compile field data, analyze, and process it to develop a total, overall Waste Generation Rate per household, which will be computed as:

$$\text{Residential Cart Waste Tons} + \text{Bulk Waste Tons} = \text{Total Waste Tons}$$



Waste Generation Rate (WGR) = Total Waste Tons / Total Number of Households

The WGR will be computed, as a final product, on an annual basis.

The WGR for the Wet Season will be submitted to the Town/WMI as part of an interim report within 6 weeks after completion of the Wet Season field data collection effort.

Compensation and "Agreement Price"

The Agreement Price, as defined in the Agreement for Professional Consulting Services to which this Schedule A is attached is based on the following budgeted field data collection staff hours per Season:

960 staff hours for Residential Cart Service  
and  
120 staff hours for Bulk Waste Service

For both Seasons, a total of 2,160 staff hours are required for field data collection. The high number of staff hours stems partially from the use of a 100% sample size.

In addition, adequate staff hours are budgeted for data compilation and analysis needed to prepare for field data collection and calculate the Waste Generation Rate.

The Agreement Price is therefore, on a lump sum basis:

\$ 119,600

Brown and Caldwell will invoice the Town as set forth in Section 6.0-Payment of the Agreement for Professional Consulting Services to which this Schedule A is attached. Each invoice will describe the percent completion during the invoice period. It is anticipated that 45.0% of the Agreement Price will be invoiced after each Season's data collection effort, and that 5.0 % of the Agreement Price will be invoiced after submittal of each Season's corresponding report.

The WGR for both the Wet Season and the Dry Season (the total tons per household per year) will be submitted to the Town/WMI as part of a final report within 6 weeks after completion of the Dry Season field data collection in January 2006.

END OF SCHEDULE A

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